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8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 vs.

14 MAM WEALTH MANAGEMENT, LLC;
15 MAMW REAL ESTATE FUND
16 GENERAL PARTNER, LLC; ALEX
MARTINEZ; and RAPHAEL R.
SANCHEZ,

17 Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

28

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. This matter involves a \$10.3 million securities fraud by MAM Wealth
5 Management, LLC (“MAM”), a Commission registered broker-dealer and a
6 California registered investment adviser; MAMW Real Estate Fund General
7 Partner, LLC (“MAMW”), the general partner of MAM Wealth Management Real
8 Estate Fund, LLC (“Fund”); Alex Martinez (“Martinez”), the owner of MAM,
9 member of MAMW, and President of the Fund; and Raphael R. Sanchez
10 (“Sanchez”), a registered representative licensed with MAM, member of MAMW,
11 and Chief Financial Officer of the Fund. From July 2007 through March 2009,
12 Martinez and Sanchez invested approximately \$10.3 million, from approximately
13 50 of their advisory clients, in the Fund. The offering memorandum for the Fund
14 described it as “speculative” with a “high degree of risk,” limited it to only
15 “accredited investors,” stated it was “suitable only for sophisticated investors,” and
16 cautioned that investors needed to accept “the risk of loss of investment and lack of
17 liquidity.” Despite the defendants’ knowledge of these risks, defendants Martinez
18 and Sanchez knowingly and recklessly misrepresented to their MAM clients that
19 the Fund was a safe and relatively liquid investment. In addition, Martinez and
20 Sanchez used their discretionary authority over the funds of other MAM clients to
21 invest substantial client assets into the Fund, in breach of their fiduciary duty
22 because the Fund was an unsuitable investment for their clients who were
23 unaccredited investors, retirees with limited means, or the Fund was contrary to the
24 clients’ stated, conservative investment goals.

25 2. The confidential offering memorandum listed a variety of types of
26 investments to be targeted by the Fund, including publicly traded or privately held
27 real estate operating companies, programmatic joint ventures, corporate
28 divestitures, community/residential developments, commercial developments, debt

1 this Complaint.

2 5. Venue is proper in this district pursuant to Section 22(a) of the
3 Securities Act, 15 U.S.C. § 77v(a); Section 27 of the Exchange Act, 15 U.S.C. §
4 78aa; and Section 214 of the Advisers Act, 15 U.S.C. §80b-14, because certain of
5 the transactions, acts, practices, and courses of conduct constituting violations of
6 the federal securities laws occurred within this district, defendants Martinez and
7 Sanchez reside in this district, and defendants MAM and MAMW had their
8 principal place of business in this district.

9 **DEFENDANTS**

10 6. **Alex Martinez (aka Alejandro Martinez)** (“Martinez”), age 49,
11 resides in Studio City, California. Martinez is the owner, CEO and chief compliance
12 officer of MAM, and has Series 7, 24, 63, and 65 licenses. Martinez is a member of
13 MAMW and its Manager, and the President of the Fund.

14 7. **Rafael R. Sanchez (aka Rafael R. Sanchezfox)** (“Sanchez”), age 52,
15 resides in Altadena, California. Sanchez has been a registered representative
16 licensed with MAM since September 2007, and has Series 7 and 65 licenses.
17 Sanchez is a member of MAMW, and the Chief Financial Officer of the Fund.

18 8. **MAM Wealth Management, LLC (dba MAM Securities, LLC)**
19 (“MAM”) is a California limited liability company formed in 2003, with its principal
20 place of business in Sherman Oaks, California. MAM is a broker-dealer registered
21 with the Commission, and an investment adviser registered with the State of
22 California. MAM has approximately 170 clients (including individuals, IRA
23 accounts, trusts, and corporations) and \$20 million in assets under management.

24 9. **MAMW Real Estate Fund General Partner, LLC**, (“MAMW”) is a
25 Delaware limited liability company formed in June 2007 with its principal place of
26 business in Sherman Oaks, California. It was formed to be the general partner of the
27 Fund.

28 ///

1 would be exempt from registration as an investment company under Section 3(c)(7)
2 of the Investment Company Act.

3 13. The COM stated that the Fund's objective was to provide investors with
4 returns of 17%-18% per annum through investment in real estate related
5 opportunities in North America. The COM listed specific targeted categories of
6 domestic investments for the Fund such as: publicly traded or privately held real
7 estate operating companies, programmatic joint ventures, corporate divestitures,
8 community/residential developments, commercial developments, debt instruments,
9 portfolios of real estate and real estate loans held by financial institutions, and
10 individual real estate assets. The COM represented that the Fund's objective was to
11 make investments that can be disposed of within five to seven years.

12 14. The COM stated that the Fund would, at the discretion of MAMW,
13 make distributions of net proceeds from all investments, including, but not limited to,
14 net cash from operations and capital and refinancing proceeds from investments, in
15 the following order of priority: first, 100% to the investors, pro rata, until they have
16 received a 9% cumulative preferred return, compounded annually, on their
17 investments; second, to the investors, pro rata, until they have received their
18 unreturned investments; third, 40% to the investors and 60% to MAMW until
19 MAMW has received 20% of a sum related to the amounts paid to investors; and
20 thereafter, 80% to investors and 20% to MAMW.

21 15. The COM stated that the Fund would terminate in 2017, although that
22 term could be extended at the discretion of MAMW for three one-year periods.

23 16. The COM stated that an investment in the Fund was speculative and
24 highly risky. For example, the page numbered 2 of the COM stated that investments
25 in the Fund:

26 will involve significant risks due to, among other things, the
27 nature of the Funds investments and actual and potential
28 conflicts of interest, and there can be no assurance as to the

1 returns on any of the Fund’s investments or that there will be
2 any return of capital. . . . Investors should have the financial
3 ability and willingness to accept the risks (including, among
4 other things, the risk of loss of investment and lack of liquidity)
5 that are characteristic of the investments described herein and
6 should consult their financial advisors regarding the
7 appropriateness of making investments in . . .the Fund. There
8 will be no public market for the limited partnership interests
9 and, subject to certain limited exceptions, the limited
10 partnership interests will not be transferable.

11 17. The COM explicitly limited the Fund to sophisticated and accredited
12 investors because of the high risk and speculative nature of the fund:

13 The Interests are speculative and present a high degree of risk.
14 Investment in the Fund may only be made by “accredited
15 investors” (as defined under Rule 501(a) of Regulation D
16 promulgated under the Securities Act) and is suitable only for
17 sophisticated investors and requires the financial ability and
18 willingness to accept the high risks and lack of liquidity
19 inherent in an investment in the Fund. Investors in the Fund
20 must be prepared to bear such risks for an extended period of
21 time. No assurance can be given that the Fund’s investment
22 objective will be achieved or that investors will receive a
23 return of their capital. Each purchaser of the Interests must
24 represent that such purchaser is an “accredited investor” within
25 the meaning of Regulation D.

26 18. In a section entitled “Risk Factors” on pages 27 to 29 of the COM,
27 MAMW and the Fund disclosed 21 specific risk factors, including “Limited Current
28 Return,” “Lack of Liquidity of Investments,” and “No Transferability of, or Market

1 for, Limited Partnership Interests.”

2 19. In fact, the Fund made highly risky and speculative investments. Under
3 the management of MAMW, Martinez, and Sanchez, the Fund made nine real estate
4 loans ranging from \$150,000 to \$6.1 million, secured by second mortgages that were
5 subordinated to any outstanding first trust deeds. Some of the Fund’s borrowers
6 were in financial distress at the time the Fund extended loans, and were unable to
7 obtain additional funds from the borrowers’ existing lenders or from other lenders.

8 20. At least through January 2010, the Fund’s reports to investors stated that
9 there was no diminution in the value of the Funds’ investment portfolio. In fact, the
10 assets held by the Fund have little or no value. The Fund never received any
11 payments on two loans. Since at least 2009, the Fund has not received any payments
12 on four other loans. The Fund’s largest single loan, in the amount of about \$6.1
13 million, was secured by a second mortgage on a piece of property that had a \$30.5
14 million first lien mortgage held by the FDIC. The FDIC values the property at
15 approximately \$1 million. Another loan, secured by a junior mortgage in the amount
16 of \$710,000, has been wiped out by foreclosure on the collateral by the senior lien.
17 At least three other loans made by the Fund and secured by junior liens are secured
18 by collateral with market values below the amount secured by senior liens, leaving
19 little likelihood of recovery by the Fund.

20 21. Since January 2010, the Fund has not made distributions to investors or
21 honored any withdrawal requests. As of January 2010, investors in the Fund were
22 owed principal of over \$9 million.

23 **B. Defendants’ Fraudulent Misrepresentations and Omissions in the**
24 **Sale of the Fund to MAM’s Clients**

25 22. Martinez, Sanchez, MAM, and MAMW raised approximately \$10.3
26 million for the Fund from about 50 clients of MAM, who owned about 70 accounts
27 held either individually, as individual retirement accounts, or trusts or foundations.

28 23. Contrary to the risk disclosures in the COM, during the period from July

1 2007 through March 2009, Martinez and Sanchez knowingly and recklessly
2 misrepresented to several clients that investments in the Fund were safe. Martinez,
3 Sanchez, MAM and MAMW represented to at least one investor that the Fund was
4 going to invest in selected “AAA” properties with excellent future value, was safe
5 and secure, and was recognized by the SEC and supported by Charles Schwab. In
6 2007, Sanchez told a MAM client that the Fund carried no more risk than mutual
7 funds and bonds. In 2007, Martinez told a MAM client that the Fund was a safe
8 investment that would not jeopardize the investor’s precarious financial situation.
9 These representations were false.

10 24. Contrary to the risk disclosures in the COM concerning lack of liquidity
11 and risk, Martinez, Sanchez, MAM and MAMW represented that the Fund would
12 show profits in three years and would earn a return of 9% per year. For example, in
13 or around July 2007, Sanchez told a MAM client that the fund would increase in
14 value and there was no reason to be concerned about the security of his investment.
15 In fact, defendants had no reasonable basis for these representations and knew or
16 were reckless in not knowing that such statements were false.

17 25. Martinez, Sanchez, MAM, and MAMW did not provide the COM to
18 some MAM clients when they offered and sold investments in the Fund, and contrary
19 to the risk disclosures in the COM, falsely represented to those clients that the Fund
20 was safe and liquid. Such representations were false. The failure of Martinez,
21 Sanchez, and MAM to provide clients with the COM was a material omission.

22 **C. Defendants Breached Their Fiduciary Duty In Making Unsuitable**
23 **Investments for Their Advisory Clients**

24 26. At all relevant times, MAM was a registered investment advisor and
25 owed a fiduciary duty to its clients. Martinez was the CEO and Chief Compliance
26 Officer of MAM, and Sanchez was a client representative registered with MAM.

27 27. In breach of their fiduciary duty, MAM, Martinez, and Sanchez advised
28 their clients to invest in the Fund even though it was an unsuitable investment for the

1 clients. Although the COM specified that it was only for “accredited investors” who
2 were sophisticated, MAM, Martinez, and Sanchez advised and sold investments in
3 the Fund to several non-accredited investors.

4 28. In breach of their fiduciary duty, although the Fund was highly
5 speculative and investors needed to be prepared to lose their entire investment,
6 MAM, Martinez, and Sanchez advised several of their elderly and/or retired clients,
7 who had limited incomes and/or net worth, to invest in the Fund.

8 29. In some cases, MAM, Martinez, and Sanchez used their discretionary
9 authority over clients’ accounts to invest their clients’ money in the Fund. For
10 example, in 2007 and 2008, Martinez and Sanchez invested between 75% and 80%
11 of one 70-year old client’s accounts in the Fund without consultation. Such
12 discretionary investments breached the fiduciary duty of MAM, Martinez, and
13 Sanchez to their clients when the Fund was an unsuitable investment for the clients
14 due to the Fund’s high level of risk and lack of liquidity.

15 30. At all relevant times, Martinez and Sanchez acted with scienter.
16 Martinez’s scienter is attributable to MAMW through his role as its Manager.
17 Martinez’s scienter is attributable to MAM through his role as its owner, CEO, and
18 Chief Compliance Officer.

19 **FIRST CLAIM FOR RELIEF**

20 **Fraud in the Offer or Sale of Securities**

21 **Violations of Section 17(a) of the Securities Act**

22 **(Against All Defendants)**

23 31. The Commission realleges and incorporates by reference paragraphs 1
24 through 30 above.

25 32. The defendants, and each of them, by engaging in the conduct described
26 above, in the offer or sale of securities by the use of means or instruments of
27 transportation or communication in interstate commerce or by use of the mails
28 directly or indirectly:

- 1 a. with scienter, employed devices, schemes, or artifices to defraud;
2 b. obtained money or property by means of untrue statements of a
3 material fact or by omitting to state a material fact necessary in
4 order to make the statements made, in light of the circumstances
5 under which they were made, not misleading; or
6 c. engaged in transactions, practices, or courses of business which
7 operated or would operate as a fraud or deceit upon the purchaser.

8 33. By engaging in the conduct described above, the defendants violated,
9 and unless restrained and enjoined will continue to violate, Section 17(a) of the
10 Securities Act, 15 U.S.C. § 77q(a).

11 **SECOND CLAIM FOR RELIEF**

12 **Fraud In Connection With the Purchase or Sale of Securities**
13 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
14 **(Against All Defendants)**

15 34. The Commission realleges and incorporates by reference paragraphs 1
16 through 30 above.

17 35. The defendants, and each of them, by engaging in the conduct described
18 above, directly or indirectly, in connection with the purchase or sale of a security, by
19 the use of means or instrumentalities of interstate commerce, of the mails, or of the
20 facilities of a national securities exchange, with scienter:

- 21 a. employed devices, schemes, or artifices to defraud;
22 b. made untrue statements of a material fact or omitted to state a
23 material fact necessary in order to make the statements made, in
24 the light of the circumstances under which they were made, not
25 misleading; or
26 c. engaged in acts, practices, or courses of business which operated
27 or would operate as a fraud or deceit upon other persons.

28 36. By engaging in the conduct described above, the defendants violated,

1 and unless restrained and enjoined will continue to violate, Section 10(b) of the
2 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-
3 5.

4 **THIRD CLAIM FOR RELIEF**

5 **Fraud on Investment Adviser's Clients**

6 **Violations of Sections 206(1) and 206(2) of the Advisers Act**

7 **(Against MAM and Martinez)**

8 37. The Commission realleges and incorporates by reference paragraphs 1
9 through 30 above.

10 38. Defendants MAM and Martinez, by engaging in the conduct described
11 above, by use of the mails or means or instrumentalities of interstate commerce,
12 directly or indirectly, while acting as an investment adviser: (a) with scienter,
13 employed devices, schemes or artifices to defraud advisory clients or prospective
14 advisory clients; and (b) engaged in transactions, practices or courses of business
15 which operated as a fraud or deceit upon advisory clients or prospective advisory
16 clients.

17 39. By reason of the foregoing, defendants MAM and Martinez violated,
18 and unless restrained and enjoined will continue to violate, Sections 206(1) and
19 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

20 **FOURTH CLAIM FOR RELIEF**

21 **Aiding and Abetting Fraud on Investment Adviser's Clients**

22 **Violations of Sections 206(1) and 206(2) of the Advisers Act**

23 **(Against Sanchez)**

24 40. The Commission realleges and incorporates by reference paragraphs 1
25 through 30 above.

26 41. Defendant Sanchez, by engaging in the conduct described above, while
27 generally aware or knowing that his actions were part of an overall course of conduct
28 that was improper or illegal, provided substantial assistance to MAM in the

1 perpetration of the fraudulent scheme.

2 42. By engaging in the conduct described above, pursuant to Section 209(d)
3 of the Advisers Act, 15 U.S.C. § 80b-9(d), defendant Sanchez violated, and unless
4 restrained and enjoined will continue to violate, Sections 206(1) and 206(2) of the
5 Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Commission respectfully requests that the Court:

8 **I.**

9 Issue findings of fact and conclusions of law that the defendants committed
10 the alleged violations.

11 **II.**

12 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
13 permanently enjoining defendants and their officers, agents, servants, employees,
14 and attorneys, and those persons in active concert or participation with any of
15 them, who receive actual notice of the order by personal service or otherwise, and
16 each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. §§
17 77e(a), 77e(c) and 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),
18 and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; enjoining defendants MAM
19 and Martinez from violating Sections 206(1) and 206(2) of the Advisers Act, 15
20 U.S.C. §§ 80b-6(1) and 80b-6(2); and enjoining defendant Sanchez from aiding
21 and abetting violations of Section 206(1) and 206(2) of the Advisers Act.

22 **III.**

23 Order each defendant to disgorge all ill-gotten gains from their illegal
24 conduct, together with prejudgment interest thereon.

25 **IV.**

26 Order defendants MAM and Martinez to pay civil penalties under Section
27 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange
28 Act, 15 U.S.C. § 78u(d)(3), and Section 209(e)(1) of the Advisers Act, 15 U.S.C. §

1 80b-9(e)(1).

2 **V.**

3 Order defendants Sanchez and MAMW to pay civil penalties under Section
4 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
5 Exchange Act, 15 U.S.C. § 78u(d)(3).

6 **VI.**

7 Retain jurisdiction of this action in accordance with the principles of equity
8 and the Federal Rules of Civil Procedure in order to implement and carry out the
9 terms of all orders and decrees that may be entered, or to entertain any suitable
10 application or motion for additional relief within the jurisdiction of this Court.

11 **VII.**

12 Grant such other and further relief as this Court may determine to be just and
13 necessary.

14
15 DATED: April 7, 2011

16 Susan F. Hannan
17 Attorney for Plaintiff
18 Securities and Exchange Commission
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